

# **Attachment F**

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. O. PETER SHERWOOD

PART

IAS MOTION 49EFM

*Justice*

-----X

SUNTRUST BANK, in its capacity as administrative agent,

INDEX NO.

654148/2016

MOTION DATE

07/15/2020

Plaintiff,

MOTION SEQ. NO.

001

- v -

CALRISSIAN LP,

## DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for

LEAVE TO AMEND COMPLAINT

Leave to amend a pleading pursuant to CPLR § 3025 “shall be freely given,” in the absence of prejudice or surprise (*see e.g. Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]; *Zaid Theatre Corp. v Sona Realty Co.*, 18 AD3d 352, 354 [1st Dept 2005]). Mere lateness in seeking such relief is not in itself a barrier to obtaining judicial leave to amend (*see Ciarelli v Lynch*, 46 AD3d 1039 [3d Dept 2007]). Rather, when unexcused lateness is coupled with significant prejudice to the other side, denial of the motion for leave to amend is justified (*see Edenwald Contracting Co. v City of New York*, 60 NY2d 957, 958 [1983]). Prejudice in this context is shown where the nonmoving party is “hindered in the preparation of his case or has been prevented from taking some measure in support of his position” (*Loomis v Civetta Corinno Const. Co.*, 54 NY2d 18, 23 [1981]).

Here, plaintiff seeks to amend to add another defendant, Virgo Service Company, LLC, which plaintiff alleges to be defendant Calrissian LP’s general partner and liable for Calrissian’s debt. There is no opposition to the motion to amend and there appears to be no prejudice to the defendants at this early juncture in the litigation.

Accordingly, the motion for leave to amend the complaint is hereby GRANTED. The amended complaint in the form annexed to the moving papers shall be deemed served upon defendant Calrissian upon service of a copy of this order with notice of entry. And it is further

**ORDERED** that plaintiff shall serve defendant Virgo Service Company, LLC, pursuant to the CPLR within 20 days from the date of this order; and it is further

**ORDERED** that each defendant shall answer the amended complaint or otherwise respond thereto within 20 days from the date of said service upon them; and it is further

ORDERED that the caption be amended to reflect the addition of Virgo Service Company, LLC, as a defendant in the above captioned action and that all future papers filed with the court bear the amended caption, which shall read as follows:

-----X  
SUNTRUST BANK, in its capacity as administrative agent,

Plaintiff,

- v -

CALRISSIAN LP, and Virgo Service Company, LLC

Defendants.

-----X

and it is further

**ORDERED** that counsel for the plaintiffs shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that counsel are directed to appear for a virtual status conference by Microsoft Teams, on November 17, 2020, at 11:00 AM.

10/5/2020

DATE

CHECK ONE:

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CASE DISPOSED

☒

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

*O. P. Sherwood*

O. PETER SHERWOOD, J.S.C.